

DRAFT

ORDINANCE NO. 2022-01

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS,
CALIFORNIA, ADDING CHAPTER 11.30 TO THE ENCINITAS
MUNICIPAL CODE PROHIBITING THE USE, SALE AND DISTRIBUTION
OF BALLOONS FILLED WITH A GAS LIGHTER THAN AIR**

WHEREAS, State law currently prohibits the outdoor release of any balloon constructed of electrically conductive material that is filled with a gas lighter than air as part of a public or civic event, promotional activity or product advertisement (California Penal Code Section 653.1 and Business and Professions Code Section 22942); and

WHEREAS, State law further requires that an object of sufficient weight be affixed to each Mylar balloon at the time of sale or distribution to counter the lift capability of the balloon, and also requires the manufacturer's name to be printed on the balloon, along with a permanent warning notice regarding the conductivity and danger of Mylar balloons (California Penal Code Section 653.1 and Business and Professions Code Section 22942); and

WHEREAS, the City of Encinitas desires to implement additional measures to minimize the existence of balloons filled with a gas lighter than air within the City and mitigate the dangerous impacts from these balloons coming into contact with ocean life, animals and power lines; and

WHEREAS, balloons can be damaging to ecosystems and wildlife when released into the air or not disposed of properly, as they are not biodegradable; and

WHEREAS, the Ocean Conservancy lists balloons as the second most dangerous debris item since they are frequently mistaken as food by birds, mammals, and marine life. When balloons are ingested, they block the animals' digestive track, which leads to a loss of nutrition, internal injury, starvation, and death. Balloon ribbon is also hazardous because it can choke or entangle birds, mammals, and marine life in a manner that limits their mobility; and

WHEREAS, balloons are the most common form of floating garbage within 200 miles of American shorelines, and beach litter surveys have shown that the number of balloons and balloon pieces found on beaches has tripled in the past 10 years; and

WHEREAS, balloon debris on City beaches is prolific despite laws and regulations that prohibit littering, which contributes to dirty beaches, parks and communities, creates added costs to City budgets and discourages tourism; and

WHEREAS, balloons made of metalized or foil materials that conduct electricity, including Mylar, also pose a safety hazard when released as they can cause power outages, explosions, downed power lines and damaged infrastructure when coming near or into direct contact with high-voltage power lines, resulting in costly repairs and/or hours of power outages affecting City residents and businesses; and

WHEREAS, over the past five years, Mylar balloons have been identified as the cause of more than 500 power outages in the San Diego region's electrical system; and

WHEREAS, the most effective way to reduce balloon debris in the City's waterways, decrease litter and pollution, and protect the environment, marine life, human health and the City's infrastructure, is to prohibit the use, sale and distribution of balloons filled with a gas lighter than air; and

WHEREAS, on October 14, 2021, the Environmental Commission considered and discussed the proposed Ordinance and recommended adoption by the City Council of Chapter 11.30 to the Encinitas Municipal Code prohibiting the use, sale and distribution of balloons filled with a gas lighter than air.

NOW, THEREFORE, the City Council of the City of Encinitas, California, does ordain as follows:

SECTION 1. All of the above recitals are true and correct.

SECTION 2. Chapter 11.30 of the Encinitas Municipal Code is hereby added to read as follows:

CHAPTER 11.30

BALLOON ORDINANCE

11.30.010 Title.

This Chapter shall be known as the "Balloon Ordinance".

11.30.020 Purpose and Intent.

The purpose of this Chapter is to establish standards and procedures for environmental waste and litter reduction measures and promote environmentally sustainable practices throughout the City by prohibiting the use, sale and distribution of balloons filled with a gas lighter than air. In enacting this Chapter, it is the City's intent to further current prohibitions and regulations relating to balloons under State law and to protect the City's residents, businesses, animals, and infrastructure from damage caused by balloons. Nothing in this Chapter is intended to or shall be interpreted as conflicting with any federal or state law or regulation.

11.30.030 Definitions.

For purposes of this Chapter only, the terms below have the following meaning:

“Balloon” means a flexible bag, including but not limited to, those made from rubber, latex, polychloroprene (neoprene), Mylar, or nylon fabric, that is designed to be inflated with a gas lighter than air, causing it to float, or designed to be filled with water. A balloon may be used for decorative, toy, or entertainment purposes. Balloons used for medical, industrial, or scientific purposes are not subject to the provisions of this ordinance.

“Gas Lighter Than Air” means a gas that has a lower density than normal atmospheric gases and rises above them as a result, including, but are not limited to, helium, hydrogen, methane, oxygen, and nitrogen.

“Person” means any person, business, corporation, or event organizer or promoter; public, nonprofit or private entity, agency or institution; or partnership, association or other organization or group, however organized.

11.30.040 Prohibition on the Use, Sale and Distribution of Balloons

A. No Person, including, but not limited to, a balloon wholesaler, retailer, or third-party vendor, shall use, sell, or distribute any type of Balloon inflated with any Gas Lighter Than Air within the City, either as a separate item or included in a packaged product set, including at any City Facility or City-Sponsored Event.

B. No Person shall dispose of any Balloon inflated with any Gas Lighter Than Air within the City in any manner, including release outdoors into the air, other than in a trash container.

C. This Section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research project.

11.30.050 Enforcement; Penalties.

A. Any violation of this Chapter shall be enforced through the Administrative Citation Program set forth in Chapter 1.08 of the Encinitas Municipal Code.

B. Each violation of this Chapter shall be considered a separate offense.

C. The remedies and penalties provided in this Chapter are cumulative and not exclusive and nothing in this shall preclude the City from pursuing any other remedies. The City Attorney may seek legal, injunctive, or any

other relief to enforce the provisions of this chapter and any regulations or administrative procedure developed pursuant hereto.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment. Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that anyone or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

SECTION 5. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California, held on this _____ day of _____, 2022; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the _____ day of _____, 2022, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

Catherine S. Blakespear, Mayor

ATTEST:

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on this _____ day of _____, 2022 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on this ____ day of _____, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this _____ day of _____, 2022.

Kathy Hollywood, City Clerk